

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JENNIFER NICOLE KEY,

Plaintiff,

vs.

No. 17-cv-00386-KWR-GBW

SOCIAL SECURITY ADMINISTRATION,  
*Andrew M. Saul, Commissioner of  
Social Security Administration*,<sup>1</sup>

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S  
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

**THIS MATTER** is before the Court on Plaintiff's Motion for an Order Authorizing Attorney's Fees Pursuant to 42 U.S.C. § 406(b) (doc. 36) and the Magistrate Judge's Proposed Findings and Recommended Disposition ("PFRD") (doc. 42).

This case was referred to the Magistrate Judge to conduct hearings and perform legal analysis pursuant to 28 U.S.C. § 636(b)(1)(B), (b)(3) and *Va. Beach Fed. Sav. & Loan Ass'n v. Wood*, 901 F.2d 849 (10th Cir. 1990). *See* Doc. 40. The Magistrate Judge filed his PFRD recommending that Plaintiff's Motion be granted on December 4, 2020. Doc. 42. Neither Plaintiff nor Defendant filed objections to the Magistrate Judge's PFRD within fourteen days as required by the statute. Appellate review of these issues is therefore waived. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1059–60 (10th Cir. 1996). Failure to object to the PFRD also waives the right to *de novo* review by the district court. *See id.* at 1060; *Thomas v. Arn*, 474 U.S.

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<sup>1</sup> Andrew M. Saul is the current Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Andrew M. Saul is automatically substituted for Acting Commissioner Nancy A. Berryhill as the Defendant in this suit.

140, 149–150 (1985). Nevertheless, the Court decided *sua sponte* to conduct a *de novo* review of the Magistrate Judge’s findings in this case. *See One Parcel*, 73 F.3d at 1061. The Court hereby concurs with all of the factual and legal conclusions recited therein.

Wherefore, **IT IS HEREBY ORDERED** that the Magistrate Judge’s Proposed Findings and Recommended Disposition (doc. 42) are **ADOPTED**. Plaintiff’s Motion for an Order Authorizing Attorney’s Fees Pursuant to 42 U.S.C. § 406(b) (doc. 36) is **GRANTED**, and the Court hereby authorizes an award of **\$20,371.25** in attorney’s fees, to be paid to Plaintiff’s counsel by the Commissioner from the funds withheld for this purpose.

**IT IS FURTHER ORDERED** that Plaintiff’s counsel shall refund to Plaintiff the fee of **\$6,306.30** awarded under the Equal Access to Justice Act, 28 U.S.C. § 2412, pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).



KEA W. RIGGS  
UNITED STATES DISTRICT JUDGE